

IN THE  
SUPREME COURT OF MISSISSIPPI

No. 2014-TS-01696

WELLNESS, INC., d/b/a WELLNESS  
ENVIRONMENTS

Appellant

v.

PEARL RIVER COUNTY HOSPITAL

Appellee

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BRIEF AMICUS CURIAE OF  
MICHAEL BOLEWARE, HOPE THOMLEY,  
DENNIS PIERCE, CLAYTON DEARDORFF,  
STEPPING STONES HEALTHCARE, LLC, AND PROJX, LLC  
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## INTEREST OF THE AMICI

The interests of the Amici are set forth in Amici's Motion For Leave To File Brief Amicus Curiae.

## FACTUAL BACKGROUND

Pearl River County Hospital ("PRCH") is a community hospital as defined by Mississippi Code § 41-13-10, having its principal place of business in Poplarville, Mississippi. It is operated by a Board of Trustees whose members are appointed by the Pearl River County Board of Supervisors. The Board of Trustees has such powers and responsibilities as authorized by Mississippi Code § 41-13-35.<sup>1</sup>

In May/June 2010, the Board of Trustees (hereinafter the "Board") hired Mike R. Boleware as PRCH's Administrator.<sup>2</sup> Pursuant to the PRCH Bylaws, Mike R. Boleware had authority to perform duties as may be necessary on behalf of the Board and authority to carry out actions as assigned to him by the Board.<sup>3</sup>

### **The Board's Pattern For Approving Contracts**

Before Mike R. Boleware's arrival, the Board of Trustees had a pattern of documenting in its meeting minutes its approval of contracts. The following are examples.

After a tour of the building the Board had a short meeting Johanna Peterson made a motion to make an offer of \$120,000, after there was no second Rita Cooley made a motion to offer \$130,000 with everything left in the building. This motion was seconded by Dennis Barnett and passed unanimously.

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<sup>1</sup> See ¶ 1, 14 of the First Amended Complaint in *In Re Pearl River County Hospital*, Pearl River County Circuit Court Cause No. 2012-0277H, attached hereto as Exhibit "A." See also Mississippi Code § 41-13-29.

<sup>2</sup> See Minutes of Meetings of the Pearl River County Hospital Board of Trustees, attached hereto as Exhibit "B", at page labeled PRCH 49. See also First Amended Complaint ¶ 18.

<sup>3</sup> See PRCH Bylaws attached hereto as Exhibit "C"

Minutes of the Board's April 21, 2009 meeting.

Motion made by Johanna Peterson seconded by Emily Dedeaux and passed unanimously for the following:

1. Mrs. Bilbo to sign closing documents when they are completed.
2. Prepare sheets for contractors and sub-contractors
3. Hold four meetings for contractors/sub-contractors to walk through and look at the work to be done. Meetings to be week 1 Monday and Wednesday during normal work hours. Week 2 Tuesday and Thursday during evening hours.
4. Bids to be submitted with contractor supplying materials and with the facility supplying materials.
5. Will advertise for bids as soon as closing occurs.
6. Contractors/sub-contractors will be responsible for permits.

Minutes of the Board's May 26, 2009 meeting.

Bids for renovation of the recently purchased medical office were opened by Emily Dedeaux. After some discussion it was decided that the Board would meet on Friday, July 3, 2009 to award the contract for the renovation.

Minutes of the Board's June 30, 2009 meeting.<sup>4</sup>

The members of the Board understood the language of these minutes to memorialize their acts as the Board of Trustees to authorize and approve the contracts to purchase and the contracts to renovate the subject clinic building in Poplarville, Mississippi.<sup>5</sup>

In another example from the Board's June 30, 2009 meeting, the minutes state:

Motion made by Rita Cooley to purchase three AED's [Automated External Defibrillators] and train all staff in the use of this equipment as

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<sup>4</sup> See Exhibit "B" at PRCH 23, 21, and 16, respectively.

<sup>5</sup> See the March 4, 2015 deposition of Board Secretary Johanna Peterson, attached hereto as Exhibit "D," at pages 19-21, 23-24; the March 5, 2015 deposition of Board President Harry Garrett, attached hereto as Exhibit "E," at pages 16-23; the March 9, 2015 deposition of Board member Dennis Barnett, attached hereto as Exhibit "F," at pages 16-18; the March 5, 2015 deposition of Board member Rita Cooley, attached hereto as Exhibit "G," at pages 16-17; the March 9, 2015 deposition of Board member Emily Dedeaux, attached hereto as Exhibit "H," at pages 12-18.

well as CPR. This motion was seconded by Johanna Peterson and passed unanimously.<sup>6</sup>

The members of the Board of Trustees understood this language to memorialize the Board's authorization of the Administrator (then Dorothy Bilbo) to make the purchase.<sup>7</sup>

### **Approval Of The Stepping Stones Healthcare Contract**

After Mike R. Boleware was hired, the Board continued approvals of contracts in its meeting minutes in the same manner. Regarding the Stepping Stones Healthcare contract, the minutes of the Board's November 30, 2010 meeting state:

Mr. Boleware discussed the opportunities and services working with Stepping Stones Healthcare Corporation could bring to our Facility as well as the Community. Board agreed to have Attorney Joe Stevens review the Agreement and report back to the Board at the December meeting.

Then, the minutes of the Board's December 28, 2010 meeting state:

Emily Dedeaux made a motion, Dennis Barnett seconded to authorize the Administrator to pursue the agreement with Stepping Stones Healthcare Corp (SSHC). Board voted and it was carried.

The minutes of the Board's January 18, 2011 meeting state:

Board was told that Stepping Stones would be starting the construction/ renovations needed in the following week and the Cat Scan should be here in the next week as well.<sup>8</sup>

The Board members understood this language to memorialize the Board's approval of the contract and authorization of the Administrator to sign that agreement.<sup>9</sup> Upon the Board's

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<sup>6</sup> See Exhibit "B" at PRCH 15.

<sup>7</sup> See Exhibit "D" (Peterson deposition) at pages 26-27; Exhibit "E" (Garrett deposition) at pages 21-23; Exhibit "F" (Barnett deposition) at pages 17-18; Exhibit "G" (Cooley deposition) at pages 17-18; and Exhibit "H" (Dedeaux deposition) at page 19.

<sup>8</sup> See Exhibit "B" at PRCH 36, 37, and 59, respectively.

<sup>9</sup> See Exhibit "D" (Peterson deposition) at pages 75-84; Exhibit E (Garrett deposition) at pages 45-50; Exhibit "F" (Barnett deposition) at pages 47-50; Exhibit "G" (Cooley deposition) at pages 50-55; Exhibit "H" (Dedeaux

authorization, with the advice and approval of the Board's attorney,<sup>10</sup> and on behalf of PRCH, Mike R. Boleware signed a Management Agreement with Stepping Stones Healthcare for the operation of an Intensive Outpatient Psychiatric ("IOP") therapy program at PRCH.<sup>11</sup>

Thereafter, the contractual relationship with Stepping Stones Healthcare was mentioned multiple times in the Board's meeting minutes.<sup>12</sup> Also, multiple checks were signed by members of the Board to make PRCH payments to Stepping Stones pursuant to the IOP Management Agreement.<sup>13</sup>

### **Approval Of The Lease For The Purvis Clinic Building**

The pattern continued in the Board's approval of a lease agreement between PRCH and Dennis Pierce for the lease of a clinic building in Purvis, Mississippi. The minutes of the Board's February 15, 2011 meeting state:

After a lengthy discussion Emily Dedeaux made a motion and Dennis seconded to allow Boleware and Joe Stevens to move forward in negotiating a contract with Dr. Charles Griffith. This was passed unanimously. Board agreed that Dr. Griffith should pay 1/3 of the cost of setting up the new clinic. Also he should put in two days at the Poplarville Clinic instead of one. The new clinic in Purvis would be initially set up in a portable building until a permanent building would be built by the owner of the property which would then be leased out. A motion was made by Dennis Barnett and second by Rita Cooley for Attorney Joe Stevens and Mike Boleware to negotiate a lease agreement.

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deposition) at pages 44-47; Exhibit "I" (Pardue deposition) at pages 42-46.

<sup>10</sup> The Board's attorney attended the Board meeting when the Stepping Stones contract was approved, and the subsequent meeting when the minutes of the prior meeting were approved. See Exhibit "B" at PRCH 36-38, 59.

<sup>11</sup> The "Management Agreement" between Stepping Stones Healthcare and Pearl River County Hospital is attached hereto as Exhibit "J."

<sup>12</sup> See, e.g., Exhibit "B" at PRCH 88-90, 91-94, 103-105, 253-260, 261-275, 321-328, 383-389, 405-411, 478-482, 493-496.

<sup>13</sup> See attached hereto as Exhibit "O" copies of PRCH checks made payable to Stepping Stones Healthcare and signed by PRCH Board of Trustees members.

Then, the minutes of the Board's April 19, 2011 meeting state:

Motion made by Becky Pardue and a second by Dennis Barnett to negotiate on the Lease agreement from a 15 yr. to include HVAC or only a 10 year lease on the Purvis Clinic in the amount of \$7253.52 (tax & insurance). This was carried.<sup>14</sup>

The members of the Board of Trustees understood the language of their meeting minutes to memorialize the Board's approval of the lease of the Purvis Clinic building and the Board's authorization of the PRCH Administrator to sign the lease agreement on behalf of PRCH.<sup>15</sup>

Upon the Board's authorization, and with the advice and approval of the Board's attorney, Mike R. Boleware signed an agreement on behalf of PRCH with Dennis Pierce for the lease of the Purvis Clinic building.<sup>16</sup> After the April 19, 2011 meeting, there are multiple references in the minutes of the PRCH Board of Trustees of the ongoing contractual relationship between PRCH and Dennis Pierce of the Purvis Clinic Building.<sup>17</sup> Also, Board members signed checks to spend PRCH funds to make payments to Dennis Pierce on the lease.<sup>18</sup>

### **Approval Of The Lease For An IOP Program Van**

The pattern is seen again in the April 19, 2011, Board meeting minutes. Present at the meeting were Chairman Harry Garrett, Vice Chairman Dennis Barnett, Secretary Johanna

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<sup>14</sup> See Exhibit "B" at PRCH 61 and 65, respectively.

<sup>15</sup> See Exhibit "D" (Peterson deposition) at pages 87-89; Exhibit "E" (Garrett deposition) at pages 55-57; Exhibit "F" (Barnett deposition) at pages 55-60, 86, 102-104; Exhibit "G" (Cooley deposition) at pages 58-64, 126-132; Exhibit "H" (Dedeaux deposition) at pages 50-54, 102-103; Exhibit "I" (Pardue deposition) at pages 52-61, 88, 121-124.

<sup>16</sup> The April 21, 2011, "Lease Agreement" between Dennis L. Pierce and Pearl River County Hospital is attached hereto as Exhibit "K."

<sup>17</sup> See, e.g., Exhibit "B" at PRCH 72, 78, 81, 331, 345-46, 409, 446, 459.

<sup>18</sup> See attached hereto as Exhibit "L" copies of PRCH checks made payable to Dennis Pierce and signed by PRCH Board of Trustees members.



Peterson, Trustees Rita Cooley, Emily Dedeaux, and Becky Pardue, Administrator Mike R. Boleware, Board Attorney Joe Stevens, and Wade Walters. Regarding the lease of a van for use in the IOP program, those minutes state:

Wade presented the Board with a lease in the amount of \$49,600 for a Van required for the IOP. Emily Dedeaux made a motion, with a second by Rita Cooley to approve the lease. This was carried.<sup>19</sup>

Members of the Board of Trustees understood this language to memorialize the Board's authorization and approval of the lease of the subject van.<sup>20</sup> Upon the Board's authorization, Mike R. Boleware signed an agreement on behalf of PRCH with Performance Capital Leasing, LLC for lease of the van.<sup>21</sup> After the April 19, 2011 meeting, there are multiple references in the minutes of the PRCH Board of Trustees to the ongoing contractual relationship between PRCH and Performance Capital Leasing for lease of the van.<sup>22</sup> Additionally, multiple checks were signed by members of the Board to make payments on the van lease.<sup>23</sup>

#### **Approval Of The Lease For An IOP Program Modular Building**

At the September 27, 2011 meeting of the Board, all members were present, along with Administrator Mike R. Boleware, Hope Thomley, and others. Minutes of that meeting state:

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<sup>19</sup> See Exhibit "B" at PRCH 65.

<sup>20</sup> See Exhibit "D" (Peterson deposition) at pages 93-96; Exhibit "E" (Garrett deposition) at pages 61-62; Exhibit "F" (Barnett deposition) at pages 61-62; Exhibit "G" (Cooley deposition) at pages 62-66; Exhibit "H" (Dedeaux deposition) at pages 55-56, 59, 140; Exhibit "I" (Pardue deposition) at pages 59-60.

<sup>21</sup> The May 26, 2011 Lease Agreement between PRCH and Performance Capital Leasing LLC is attached hereto as Exhibit "M."

<sup>22</sup> See, e.g., Exhibit "B" at PRCH 71, 236, 249, and 360.

<sup>23</sup> See attached hereto as Exhibit "N" copies of PRCH checks made payable to Performance Capital Leasing and signed by PRCH Board of Trustees members Rita Cooley, Emily Dedeaux, Harry Garrett, Johanna Peterson, Scott Alsobrooks, Rita Jones, Collette Oldmixon, and Dawn Stuit. See also Exhibit "D" (Peterson deposition) at pages 100-101.

Mrs. Thomley updated the Board on obtaining a modular for IOP. Discussion included the possible location and cost of the modular. The need is pressing due to the patient load in IOP at the present time. Mrs. Peterson requested a summary of the cost versus profit of this service brought to the next financial meeting. Mr. Walters will provide a worksheet for the Board. Mrs. Dedeaux made a motion to lease a modular for the IOP department and a second was noted by Mrs. Pardue. No objections noted.<sup>24</sup>

Upon the authorization by the Board, Mike R. Boleware signed a lease for a modular building with Performance Capital Leasing, LLC , effective October 1, 2011.<sup>25</sup> The Board ratified the lease of the IOP modular building in a meeting held October 11, 2011. The Board's minutes of that meeting state:

IOP Program: Mrs. Thomley updated the Board on cost versus income in this department. Discussion included the increase in patient volume, the waiting list for enrollment into this program, the potential monies this program could generate, the modular lease, and the estimated date of arrival and the future location of the modular. Mr. Barnett made a motion to lease the modular with a second noted by Mrs. Cooley. No objections noted.<sup>26</sup>

Members of the Board of Trustees reasonably interpreted and understood the language of their minutes to memorialize the Board's approval of the lease of the IOP modular building.<sup>27</sup> There are multiple references in the minutes of the PRCH Board of Trustees after the October 11, 2011 meeting to the ongoing contractual relationship.<sup>28</sup> Additionally, multiple checks were signed by

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<sup>24</sup> See Exhibit "B" at PRCH 94.

<sup>25</sup> The October 1, 2011 Lease Agreement between PRCH and Performance Capital Leasing LLC is attached hereto as Exhibit "P."

<sup>26</sup> See Exhibit "B" at PRCH 104-105.

<sup>27</sup> See Exhibit "D" (Peterson deposition) at pages 124-125, 129-132, 142-143; Exhibit "E" (Garrett deposition) at pages 51-53, 80, 88; ; Exhibit "F" (Barnett deposition) at pages 81-84, 87-88; Exhibit "G" (Cooley deposition) at pages 80; Exhibit "H" (Dedeaux deposition) at pages 76-78, 86-87; Exhibit "I" (Pardue deposition) at pages 86-89.

<sup>28</sup> See, e.g., Exhibit "B" at PRCH 108, 113, 123, 124, 142.

members of the Board, making payments to Performance Capital Leasing for the IOP modular leases.<sup>29</sup>

### **Approval Of The Wellness Project**

The Wellness Project provides another example of the PRCH Board of Trustees' method of documenting its approval of contracts for the hospital. The Wellness Project involved several parties working with PRCH for the lease and installation of equipment to improve the hospital rooms at PRCH. Minutes of several Board meetings document the process of approval. The minutes of the August 11, 2011 Board meeting state:

Wellness Environment Rooms and Financing: Mrs. Thomley would like to present two options for installations of these rooms as well as two options for financing this project. Kingsbridge Port, the financing Company used by Wellness Environment, and Regions Bank will provide a quote for the financing. Also noting, she has been in discussion with Valentin Gercu, the installer for the North Sunflower Hospital room renovations.

The September 8, 2011 Board meeting minutes state:

Tallahatchie Trip: Updates were given from the recent trip to view the Wellness Environment room installations, laundry services, and special needs units. . . .

Wellness Environment: Mrs. Thomley informs that the current rate of financing has been lowered from 8 percent to 4.25 percent. Noting also a reduction of approximately \$50,000 in the overall price of this project due to remodeling of the bathrooms being excluded. Wellness Environment will renovate twelve rooms with the remaining ten hospital rooms to be remodeled by a contractor for a cost of less than \$5000.00 per room. Noting the new hospital beds have arrived and each room will have televisions with DVD players installed so the patients will have access to educational videos.

Then the minutes of the September 27, 2011 Board of Trustees meeting state:

Wellness Rooms: Mrs. Thomley gave a review of the Wellness Room installation. Discussion included the time frame of construction, the

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<sup>29</sup> See Exhibit "N".

number of rooms under construction at each phase and the cost of each room. Mr. Walters explained capitalization and reimbursement to the Board members. Mrs. Cooley made a motion to continue with the Wellness Environment renovations of four ( 4) rooms at a time. A second was noted by Mrs. Pardue. No objections noted.<sup>30</sup>

Board members reasonably interpreted and understood the language of these minutes to memorialize the Board's approval of the contracts involved in the Wellness project, which contracts included the equipment agreement with Wellness, the lease financing agreement with Kingsbridge, and the architectural services agreement with ProjX, LLC.<sup>31</sup> Upon the Board's authorization, Mike R. Boleware signed on behalf of PRCH an agreement with Wellness,<sup>32</sup> a lease financing agreement with Kingsbridge Healthcare Finance,<sup>33</sup> and an architectural services agreement with ProjX, LLC.<sup>34</sup> After the September 27, 2011 meeting, there are multiple references in the minutes of the PRCH Board of Trustees to the Wellness Project and the ongoing contractual relationships.<sup>35</sup>

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<sup>30</sup> See Exhibit "B" at PRCH 80-84, 88-90, and 91-94, respectively.

<sup>31</sup> See Exhibit "D" (Peterson deposition) at pages 124-128, 145-146; Exhibit "E" (Garrett deposition) at pages 76-79, 84, 91; Exhibit "F" (Barnett deposition) at pages 82-84, 90, 96; Exhibit "G" (Cooley deposition) at pages 76, 79-81; Exhibit "H" (Dedeaux deposition) at pages 79-80, 91-92; Exhibit "I" (Pardue deposition) at pages 83-84, 106-107.

<sup>32</sup> The "Agreement For Furniture, Furnishings, Fixtures, Equipment, And Systems" between Wellness Environments and Pearl River County Hospital is attached hereto as Exhibit "Q."

<sup>33</sup> The "Master Equipment Lease Agreement" between Kingsbridge Healthcare Finance and Pearl River County Hospital is attached hereto as Exhibit "R." See also the appeal presently pending before the Court in Kingsbridge Holdings, LLC v. Pearl River County Hospital And Nursing Home, Supreme Court of Mississippi Cause No. 2015-TS-00075.

<sup>34</sup> The Agreement (AIA Document B141) between Pearl River County Hospital and ProjX, LLC is attached hereto as Exhibit "S."

<sup>35</sup> See, e.g., Exhibit "B" at PRCH 110-115 and discussion of new Board members below.

## **Approvals By The New Board Of Trustees**

In 2012, the PRCH Board of Trustees was re-constituted by the Pearl River County Board of Supervisors. All new members were named to the Board. Collette Oldmixon became the new chair of the Board.<sup>36</sup> Under Collette Oldmixon's leadership, the Board of Trustees continued to approve contracts in the same pattern as the prior Board. There are many examples. The minutes of the Board's April 26, 2012 meeting provide the following:<sup>37</sup>

### Approval of Service Contract with Global Medical Imaging

Trustee Roberson made a Motion to approve the one year service contract for Global Medical Imaging in the amount of \$7150.00. Trustee Stuit seconded the Motion. The Motion having received the affirmative vote of a majority of the members present, the Vice Chairman declared the motion carried and adopted on the following vote: . . . [vote tally showing unanimous approval]

Chairperson Collette Oldmixon understood, with the benefit of the advice of the Board's attorney, Joe Stevens, that this language approved the contract and authorized her to sign the contract on behalf of the hospital.<sup>38</sup> Oldmixon testified at deposition:

- Q And I want to ask you specifically about the approval of the service contract with Global Medical Imaging. Do you see that paragraph?
- A I do.
- Q It appears that you voted in favor of it, correct?
- A That's correct.
- Q My question about the Global Medical Imaging contract is similar to the ones I've asked you already. Is it your understanding that this paragraph memorialized the board's approval of the Global Medical Imaging contract?

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<sup>36</sup> See Exhibit "B" at PRCH 187-200.

<sup>37</sup> See Exhibit "B" at PRCH 196.

<sup>38</sup> See the deposition of Collette Oldmixon, taken April 28, 2015 and May 12, 2015, attached hereto as Exhibit "T", at pages 188-190, 194, 204-209.

A That's correct.<sup>39</sup>

One further example is taken from the new Board's May 31, 2012 meeting minutes, which state:

OPTIMUM INSIGHT CONTRACT

Board of Trustees heard from Attorney Stevens as to the changes made to the proposed Care-Medic/ Optimum Insight Contract. After discussion, Trustee Alsobrooks tendered a motion to accept the Optimum Insight Contract and to authorize the Chair of the Board of Trustees to sign the same. Trustee Stuit seconded the motion. Motion carried unanimously, with the vote being: . . . [vote tally showing unanimous approval]<sup>40</sup>

Chair Oldmixon articulated her understanding of these minutes in the following terms:

Q . . . Was it your understanding at the time that you approved these minutes that the paragraph that we're seeing on page 235 concerning the Optimum Insight contract was adequately spreading the contract on the board's meeting minutes?

A I think I've answered this question in similar different forms. Whatever my answer was previously, it's the same.

Q Yes. And you have. And I'll ask you that several times for specific contracts. And I'm guessing your answer's going to be the same for each one of the contracts. Is that --

A I had no reason to believe that these were not in compliance and that we were not in compliance. We had an attorney who was advising us. I don't recall him ever raising objection to the minutes we approved.

Q So in every case where we find in these board minutes where you voted to approve a contract as spread on the minutes, and then later voted to approve the minutes, that your understanding was that this type language adequately memorialized the board's approval, correct?

. . .

THE WITNESS: It was my understanding.<sup>41</sup>

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<sup>39</sup> See Exhibit "T" (Oldmixon deposition) at 204-205.

<sup>40</sup> See Exhibit "B" at PRCH 235.

<sup>41</sup> See Exhibit "T" (Oldmixon deposition) at 231-232.

In the early part of her tenure, Collette Oldmixon began a “very studied review” of the PRCH Board meeting minutes.<sup>42</sup> With her knowledge of the prior Board’s minutes, and as the new chair of the Board of Trustees, Collette Oldmixon led the Board as it voted to approve (and she voted to approve) the following acts that both confirmed and ratified actions taken by the prior Board:

- The new board recognized Wellness as sole source provider of the equipment being leased to the hospital in the Wellness Project.<sup>43</sup>
- The new board approved payment of Wellness Environments invoice of \$146,357 due pursuant to the PRCH agreement with Wellness; and the Board voted to forward the Wellness invoice to Kingsbridge Healthcare Finance for Kingsbridge to pay invoice pursuant to the PRCH agreement with Kingsbridge as part of the Wellness Project.<sup>44</sup>
- The new board approved payment of ProjX invoice in the amount of \$10,255.38 due pursuant to the PRCH agreement with ProjX; and the Board voted to forward the ProjX invoice to Kingsbridge Healthcare Finance for Kingsbridge to pay invoice pursuant to the PRCH agreement with Kingsbridge as part of the Wellness Project.<sup>45</sup>
- The new board authorized Chair Oldmixon to sign a certificate of authority representing to Kingsbridge that Chair Oldmixon had all necessary authority from the Board to act for the hospital in the ongoing contractual arrangement with Kingsbridge.<sup>46</sup> Specifically, the certificate stated:

That pursuant to the Corporation’s [i.e., the Hospital’s] organizational documents, as amended, the [Collette Oldmixon] has been given sufficient authority to act on behalf of and to bind the [Hospital] with respect to transactions involving leasing of equipment, including without limitation the execution of the Lease Agreement between Kingsbridge Healthcare Finance, a Division of Kingsbridge Holdings, LLC, as Lessor and Pearl River County Hospital, as Lessee, and related documents, including

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<sup>42</sup> See Exhibit “T” (Oldmixon deposition) at 21.

<sup>43</sup> See Exhibit “B” at PRCH 234.

<sup>44</sup> See Exhibit “B” at PRCH 234.

<sup>45</sup> See Exhibit “B” at PRCH 235.

<sup>46</sup> See Exhibit “B” at PRCH 256.

acceptance certificates, and that the execution by [Oldmixon] of documents related to such transaction constitute the legally binding and enforceable obligations of the [Hospital].<sup>47</sup>

In addition to these Board actions, new Board members signed checks payable to Stepping Stones Healthcare and Performance Capital Leasing for PRCH obligations under the contracts discussed above that were approved by the old Board.<sup>48</sup> The new Board also memorialized in its minutes that it wanted Board Attorney Joe Stevens to approach Stepping Stones Healthcare regarding a mutual termination of their agreement after Stepping Stones threatened cancellation of the contract due to PRCH's failure to make payments due under the contract.<sup>49</sup>

#### ARGUMENT

##### **PRCH Board Minutes Were Written and Recorded by Lay Board Members, Not Attorneys, and Should Be Subject to a Fair and Reasonable Interpretation.**

Under Mississippi law, the Board of Trustees of a community hospital acts as a body, and must keep official minutes of its corporate acts. See Mississippi Code Annotated § 41-13-35(3). Contracts made and entered into by such boards must be evidenced by an order duly entered onto their minutes, or by papers in such orders referred to or made a part thereof. *Marion County v. Foxworth*, 83 Miss. 677, 36 So.36, 37 (1904).

Board members appointed to serve on rural hospital boards are not legal experts in taking board minutes, nor are they expected to be. The minutes of such boards are looked upon with

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<sup>47</sup> A copy of the Certificate of Incumbency and Authority is attached hereto as Exhibit "U".

<sup>48</sup> See Exhibit "O" (PRCH checks payable to Stepping Stones), and Exhibit N (PRCH checks payable to Performance Capital Leasing) signed by new Board members Scott Alsobrooks, Rita Jones, Collette Oldmixon and Dawn Stuit.

<sup>49</sup> See Exhibit "B" at PRCH 495.



indulgence. *Noxubee County v. Long*, 141 Miss. 72, 106 So. 83, 84 (1925). Although the minutes may be unskillfully drawn, if their meaning can be ascertained by a fair and reasonable interpretation, the minutes will be sufficient to answer the requirements of the law. *Id.* at 85. Strictness of verbiage is not required in such board minutes. *Peoples Bank of Weir v. Attala County*, 156 Miss. 560, 126 So. 192, 193 (1930). Strict legal technicality is not required of the minutes of such boards, for they are not tribunals of legal experts. All that is required is substance and good sense in the terms used. *Id.* In dealing with boards administered by men and women unlearned in technical legal requirements, strict construction of their orders should not be had. *Martin v. Board of Supervisors of Winston County*, 181 Miss. 363, 178 So. 315, 320 (1938). The clerical omission of the word “approved” is not such deficiency in the board minutes as to deprive them of their intended purpose - the approval of the aimed action. *Cheatham v. Smith*, 299 Miss. 803, 92 So.2d 203, 208 (Miss. 1957). See also, *Board of Supervisors of Adams County v. Giles*, 219 Miss. 245, 68 So.2d 483 (Miss. 1953).

PRCH argues in the instant appeal that the Wellness contract was not spread on the minutes of the PRCH Board of Trustees, and further that the Board’s minutes are the only evidence that can be considered in the Court’s determination of whether a contract was ever approved. In making such argument, PRCH relies on case law addressing very different facts from those presented in the underlying litigation here. The instant case does not involve an oral contract between a vendor and a single board member, nor a construction job where the contractor performed work in excess of the written agreement at the oral instruction of a county representative. In this case, the Administrator and vendors attended Board meetings and heard the Board vote to approve the subject contracts; and the Board meeting minutes reflect (however inartfully) the facts that the Board voted to approve the contracts. If there is any doubt about the

meaning of the Board meeting minutes, the checks signed by Board members provide confirmation of their intent and the deposition testimony of the Board members provide direct evidence of the intended reasonable interpretation of what was written in the minutes.

The Mississippi Court of Appeals faced analogous facts in *Community Extended Care Centers, Inc. v. Board of Supervisors of Humphreys County*, 756 So.2d 798 (Miss. App. 1999).

There, the Court faced Humphreys County's attempt to escape the obligations of a lease agreement by taking advantage of a technical weakness in the language of the minutes of the Board of Supervisors. The Court of Appeals explained that, while the Mississippi Supreme Court,

has held consistently that a Board of Supervisors can act only as a body, and its act must be evidenced by an entry on its minutes, ...[t]he reasoning behind this rule is to protect the board from being bound by the unauthorized acts of individual members of the board or an agent thereof.<sup>50</sup>

756 So.2d at 802 (emphasis added). The county argued that prior case law required the subject contract to be held invalid because the contract was not attached to the minutes. The Court of Appeals disagreed, explaining the distinction between prior Mississippi Supreme Court cases that addressed parties attempting to enforce an oral agreement or the equivalent (like work done in excess of a written agreement that was approved by a single agent of the county)<sup>51</sup> from those

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<sup>50</sup> Citing *Nichols v. Patterson*, 678 So.2d 673, 677 (Miss. 1996)(as quoting *Smith v. Board of Supervisors of Tallahatchie County*, 124 Miss. 36, 41, 86 So. 707, 709 (1921)) and *Butler v. Board of Supervisors for Hinds County*, 659 So.2d. 578, 579 (Miss. 1995).

<sup>51</sup> See, e.g., *Thompson v. Jones County Community Hospital*, 352 So.2d 795, 797 (Miss. 1977) (discharged employee seeking payment under an oral employment contract); *Butler v. Board of Supervisors for Hinds County*, 659 So.2d. 578, 579 (Miss. 1995) (subcontractor seeking payment for extra work performed); *Burt v. Calhoun*, 231 So.2d 496 (Miss. 1970) (engineer seeking payment for services performed after contract had expired); *Colle Towing Co. v. Harrison County*, 213 Miss. 442, 57 So.2d 171 (1952) (payment suit for barges rented under oral contract); *Warren County Port Commission v. Farrell Constr. Co.*, 395 F.2d 901 (5<sup>th</sup> Cir. 1968) (contractor performed additional work orally ordered by engineer).

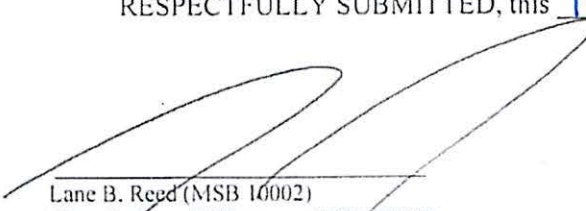
cases where the applicable board's approval was in the minutes (however inartfully written), and both parties acted in accord with the approval - execution of a written contract by an officer, storing of the contract document in the board's files, performance under the terms of the agreement, and payments made and received by their respective parties, all being such acts in accord with the board's approval. See further, *Cheatham v. Smith, supra*; *Noxubee County v. Long, supra*.

PRCH now similarly seeks to escape its contractual obligations by taking advantage of weaknesses of language in Board minutes. In doing so, PRCH relies primarily on strong language in *Thompson v. Jones County Cnty. Hosp.*, 352 So.2d 795, 796 (Miss. 1977). The case law cited by PRCH is distinguishable as noted by the Court of Appeals. *Community Extended Care Centers, Inc. v. Board of Supervisors of Humphreys County, supra*, is an accurate expression of Mississippi law as applied to PRCH facts. Mississippi law has long held that if, by a fair and reasonable interpretation the meaning of the board minutes can be ascertained, the minutes will be sufficient to answer the requirements of the law. See *Noxubee County v. Long, supra*.

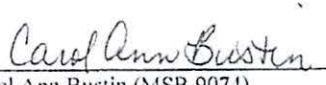
## CONCLUSION

If this Court decides that it must address the validity of the Wellness agreement in the present appeal, then the Court should consider the factual pattern of the PRCH Board in keeping its minutes, the reasonable interpretation given to those minutes by the Board itself, and the conduct of the Board that implemented the contracts. Private parties who contract with a hospital Board, having attended Board meetings and heard the Board vote to approve a contract, have no power to dictate the language of Board minutes. The contracting parties are left to rely on the Board and its attorney to believe that the language of the minutes are satisfactory.

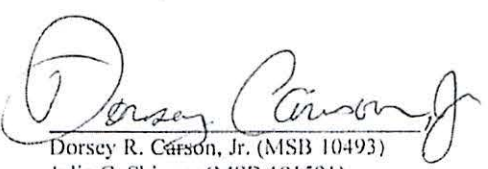
RESPECTFULLY SUBMITTED, this 17<sup>th</sup> day of July, 2015



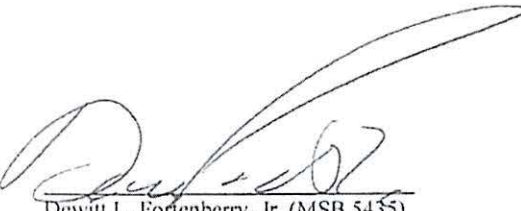
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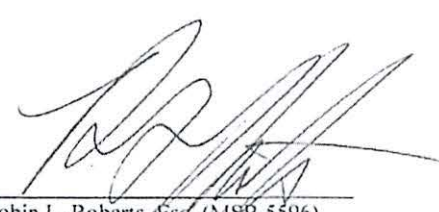
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